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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,743	09/19/2003	Gerhard Helmreich	P03,0351	4707

7590 11/17/2004

SCHIFF HARDIN & WAITE  
Patent Department  
6600 Sears Tower  
233 South Wacker Drive  
Chicago, IL 60606

EXAMINER
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FASTOVSKY, LEONID M

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/664,743

**Applicant(s)**

HELMREICH ET AL.

**Examiner**

Leonid M Fastovsky

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-2 and 7-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis et al (6,653,607).

Ellis teaches a patient positioning device 100 comprising a patient positioning plate 110, a planar heater 150 that is non-removably integrated in the plate 110 and the plate being composed of a fiber material 490 (Fig. 4)

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Asami et al (6,710,313).

Ellis teaches substantially the claimed invention, but does not teach a heating module removably inserted in the plate and a carbon fiber. Asami teaches a heating module 21 being removably inserted in the seat of a vehicle (Fig. 23) and a carbon fiber (col. 8, lines 33-36). It would have been obvious to one having ordinary skill in the art to modify Ellis's invention to incorporate a heating module to be inserted in the plate as taught by Asami (Fig. 23) and also make it flush with an exterior contour of the plate as a conventional in the art, and also use a carbon fiber in the plate for more efficient heating.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Lawson.

Ellis teaches substantially the claimed invention, but does not teach an electrical conductor disposed in the fiber composite and electrically isolated by adhesive. Lawson discloses a heater 40 having electrical conductors 28 electrically isolated by adhesive layers 56 and 58. It would have been obvious to one having ordinary skill in the art to modify Ellis's invention to include conductors and adhesive layers to electrically isolate the heater as taught by Lawson (Col. 8, lines 1-10) because the prior art is reasonably

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pertinent to the particular problem of the electrical isolation of the heater in accordance with MPEP 2141.01(a).

7. Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Theilacker et al (5,138,138).

Ellis teaches substantially the claimed invention, but is silent regarding a heating device being transparent to x-rays. Theilacker discloses a heating pad 2 having a heating conductor 16 and being pervious to x-rays. It would have been obvious to one having ordinary skill in the art to modify the invention of Ellis to include the heating pad with a conductor being pervious to x-rays for an operating table as taught by Theilacker (Abstract, lines 1-5).

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Saito (JP403066370).

Ellis teaches substantially the claimed invention, but does not teach a tomography device. Saito teaches a heating medical device using a tomography (Abstract, lines 20-22). It would have been obvious to one having ordinary skill in the art to modify Ellis's invention to include a tomography device to create a tomography image as taught by Saito (Abstract, lines 20-22).

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonid M Fastovsky whose telephone number is 703-306-5482. The examiner can normally be reached on M-Th. 8.00 am -6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

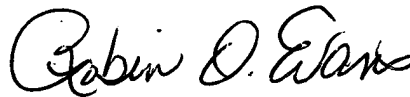
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leonid M Fastovsky  
Examiner  
Art Unit 3742

Imf



ROBIN O. EVANS  
PRIMARY EXAMINER

11/15/04